

Department of Health and Human Services

§ 96.66

any other mode of written communication, addressed to the designated Department employee. If no response is filed within that time, the offer is deemed to have been refused and no hearing will be held.

(c) If a hearing is requested, the Department will designate a presiding officer, and (subject to § 96.51 of this part) the hearing will take place at a time and location agreed upon by the State requesting the hearing, the Department, and the presiding officer or, if agreement cannot be reached, at a reasonable time and location designated by the presiding officer.

§ 96.62 Presiding officer.

(a) A Department employee to whom the Secretary delegates such authority, or any other agency employee designated by an employee to whom such authority is delegated, may serve as the presiding officer and conduct a hearing under this subpart.

(b) The presiding officer is to be free from bias or prejudice and may not have participated in the investigation or action that is the subject of the hearing or be subordinate to a person, other than the Secretary, who has participated in such investigation or action.

(c) The Secretary is not precluded by this section from prior participation in the investigation or action that is the subject of the hearing.

(d) A different presiding officer may be substituted for the one originally designated under § 96.61 of this part without notice to the parties.

§ 96.63 Communications to presiding officer.

(a) Those persons who are directly involved in the investigation or presentation of the position of the Department or any party at a hearing that is subject to this subpart should avoid any off-the-record communication on the matter to the presiding officer or his advisers if the communication is inconsistent with the requirement of § 96.68 of this part that the administrative record be the exclusive record for decision. If any communication of this type occurs, it is to be reduced to writing and made part of the record, and

the other party provided an opportunity to respond.

(b) A copy of any communications between a participant in the hearing and the presiding officer, e.g., a response by the presiding officer to a request for a change in the time of the hearing is to be sent to all parties by the person initiating the communication.

§ 96.64 Intervention.

Participation as parties in the hearing by persons other than the State and the Department is not permitted.

§ 96.65 Discovery.

The use of interrogatories, depositions, and other forms of discovery shall not be allowed.

§ 96.66 Hearing procedure.

(a) A hearing is public, except when the Secretary or the presiding officer determines that all or part of a hearing should be closed to prevent a clearly unwarranted invasion of personal privacy (such as disclosure of information in medical records that would identify patients), to prevent the disclosure of a trade secret or confidential commercial or financial information, or to protect investigatory records compiled for law enforcement purposes that are not available for public disclosure.

(b) A hearing will be conducted by the presiding officer. Employees of the Department will first give a full and complete statement of the action which is the subject of the hearing, together with the information and reasons supporting it, and may present any oral or written information relevant to the hearing. The State may then present any oral or written information relevant to the hearing. Both parties may confront and conduct reasonable cross-examination of any person (except for the presiding officer and counsel for the parties) who makes any statement on the matter at the hearing.

(c) The hearing is informal in nature, and the rules of evidence do not apply. No motions or objections relating to the admissibility of information and views will be made or considered, but either party may comment upon or rebut all such data, information, and views.